

P20310

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Temporary  
Permit 20310 (Application 29434) )  
of )  
UNITED STATES BUREAU OF )  
RECLAMATION )

Permittee, )  
\_\_\_\_\_ )

ORDER: WR 89- 6

SOURCE: Prosser Creek  
Reservoir

COUNTY: Nevada

FINDINGS AND ORDER VALIDATING

TEMPORARY PERMIT

The U.S. Bureau of Reclamation (Bureau) having filed Application 29434 for a conditional temporary urgency permit to divert and use water pursuant to Chapter 6.5 (commencing with Section 1425), Part 2, Division 2 of the Water Code; the State Water Resources Control Board (Board) having consulted with the California Department of Fish and Game (Department); Board Chairman W. Don Maughan, having reviewed available information, authorized issuance of a temporary permit; a temporary permit having been issued on March 9, 1989; the Board finds as follows:

SUBSTANCE OF THE APPLICATION

1. On March 9, 1989, the Bureau filed for a temporary permit to store 6,000 acre-feet in Prosser Creek Reservoir for Fish and Wildlife Preservation within the Truckee River/Pyramid Lake watershed. Water will be collected under the temporary permit from March 9, 1989 to April 9, 1989.

2. The Bureau holds Licensed Application 18006 to collect 30,000 acre-feet per year to storage in Prosser Creek Reservoir from April 10 to August 10 of each year. The reservoir is located on Prosser Creek approximately 4 miles north-east of the community of Truckee. Water collected under Licensed Application 18006 is for Irrigation, Domestic, Municipal, Industrial, Fish Culture, and Recreational uses.

Temporary Urgency Need of Applicant to Divert and Use Water

3. Due to drought conditions this year, storage levels are generally low in California, including those on the Truckee River system. If the current forecasts hold, 1989 will be another low water year.
4. Recent storms during the month of March have caused rainfall at a relatively high elevation in the Truckee River watershed resulting in a much earlier runoff than would normally have been expected. Fishery agencies were concerned that increased flows from the Truckee River into Pyramid Lake at this time of year would result in the attraction of spawning fish to the Truckee River. An early spawning season coupled with the potential of low flows during the normal spawning and rearing period would have had an adverse impact on the Truckee River/Pyramid Lake fishery.
5. Prosser Creek Reservoir was unable to store water due to the storage period permitted in the existing license. During the recent storms, all other facilities on the system were either storing water or engaged in operations to minimize flows into the Truckee River. Other facilities involved in

these efforts were Independence Lake, Stampede Reservoir, and Boca Reservoir on the Little Truckee River and Lake Tahoe at the Head of the Truckee River.

6. Based on the above information, the Board concludes that the Bureau has an urgent temporary need to divert and use water as authorized by Temporary Permit 20310.

Effect of the Diversion on Any Lawful User of Water

7. Application 29434 was noticed on March 9, 1989, in accordance with the Water Code. Notice was sent to all affected downstream diverters and interested parties known to the Board. The objections to the temporary permit were due by or before 5:00 p.m., March 17, 1989. Two parties responded to the notice; their response is briefly summarized below:

- (a) In a letter dated March 17, 1989, Mr. Robert S. Pelcyger, the attorney representing the Pyramid Lake Paiute Tribe of Indians, supported the Bureau's request for a temporary permit. The Tribe's support is based on the understanding with the Bureau that the additional 6,000 acre-feet of water stored in the Prosser Creek under the temporary permit will be used to provide spawning flows on the Truckee River (below Derby Dam).
- (b) The Truckee Carson Irrigation District (District) filed objection in its letter dated March 17, 1989 to the issuance of a temporary permit to the Bureau. The District represents the vested and decreed water

right holders of the Newlands Irrigation Project. The District members are taking a 35 percent reduction during the drought. In order to alleviate the impact of the drought to its members beyond 35 percent, the District is currently diverting from the Truckee River (at the Derby Dam) into the Truckee Canal at the rate of the canal's maximum capacity not to exceed 920 cubic feet per second.

On March 23, 1989, a letter was received from the attorney for the District, proposing terms for the temporary permit which would allow dismissal of their objection. After negotiations between the District and the Bureau, the following terms were agreed upon as satisfying the concerns of the District:

- a. Water shall not be stored under the temporary permit at any time when there is insufficient water flowing in the Truckee River at Derby Dam to allow the diversion of water into the Truckee Canal at its then available capacity.
- b. Nothing in this temporary permit shall constitute an approval of or precedent for storage in Prosser Creek Reservoir of water over and above the amounts otherwise authorized, nor approval of or precedent for future use of Prosser Creek Reservoir storage for fish and wildlife preservation in the Lower Truckee River.

The Board concludes that water may be diverted and used under the temporary permit without injury to any lawful user of water.

#### Effects of the Diversion on Fish, Wildlife and Other Instream Uses

8. Representatives of the California Department of Fish and Game and the U.S. Fish and Wildlife Service were contacted prior to issuance of the temporary permit to the Bureau. They are supportive of the Bureau's request to store runoff during the months of March and April provided the Bureau agrees to make releases in accordance with a plan prepared jointly by these agencies.
9. The above agencies agreed that operation of the reservoir under the temporary permit will help to preserve fish and wildlife, including an endangered species in the lower Truckee River. Term 12 in the temporary permit addresses the concerns of these agencies.
10. The Board concludes that the water may be diverted and used under the temporary permit without unreasonable adverse effect upon fish, wildlife, or other instream beneficial uses.

#### Findings Concerning the California Environmental Quality Act

11. The project is an emergency project and a Notice of Exemption has been filed in accordance with Title 14, California Code of Regulations, Section 15307.

### Public Interest

12. The Board concludes that water is available for diversion and use under Temporary Permit 20310 and that such diversion and use is in the public interest and in accordance with the constitutional policy that the water resources of the State be put to beneficial use to the fullest extent of which they are capable.

### Issuance of Temporary Permit

13. Water Code Section 1425 provides for delegation of the authority to issue temporary permits. The Board has delegated this authority to each Board Member. Section 1425 further requires that when the delegated authority is exercised, the Board shall, not later than 30 days following issuance, review and validate any temporary permit issued.
14. Board staff explained the foregoing situation to Board Chairman Maughan and recommended approval of the temporary permit. Board Chairman Maughan concurred with the staff recommendation, and on March 9, 1989, authorized issuance of the temporary permit. On March 9, 1989, Walter G. Pettit, Chief of the Division of Water Rights, issued Temporary Permit 20310.

### ORDER

NOW, THEREFORE, IT IS ORDERED THAT issuance of Temporary Permit 20310 to the U. S. Bureau of Reclamation is validated subject to the conditions specified in the permit and the following additional conditions:

- a. Water shall not be stored under the temporary permit at any time when there is insufficient water flowing in the Truckee River at Derby Dam to allow the diversion of water into the Truckee Canal at its then available capacity.
- b. Nothing in this temporary permit shall constitute an approval of or precedent for storage in Prosser Creek Reservoir of water over and above

the amounts otherwise authorized, nor approval of or precedent for future use of Prosser Creek Reservoir storage for fish and wildlife preservation in the Lower Truckee River.

#### CERTIFICATION

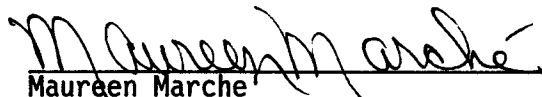
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 5, 1989.

AYE: W. Don Maughan  
Darlene E. Ruiz  
Edwin H. Finster  
Eliseo M. Samaniego  
Danny Walsh

NO: None

ABSENT: None

ABSTAIN: None

  
Maureen Marche  
Administrative Assistant to the Board



STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

## PERMIT FOR DIVERSION AND USE OF WATER

TEMPORARY PERMIT 20310Application 29434 of United States Bureau of Reclamation2800 Cottage Way, Sacramento, CA 95825filed on March 9, 1989, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

## 1. Source:

Prosser Creek

## Tributary to:

Truckee River

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Town- ship	Range	Base and Meridian
Prosser Creek Dam North 629,100 feet and East 2,526,600 feet, California Coordinate System, Zone 2	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	30	18N	17E	MD

County of Nevada

3. Purpose of use:	4. Place of use:	Section	Town- ship	Range	Base and Meridian	Acres
Fish and Wildlife Preservation	Truckee River, downstream of Prosser Creek					

The place of use is shown on map filed with the State Water Resources Control Board.

5. The water diverted and used shall be limited to the quantity which can be beneficially used and shall not exceed 6,000 acre-feet to be collected from March 9, 1989 to April 9, 1989. (0000005)

6. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this temporary permit, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this temporary permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. (0000012)

7. This temporary permit is issued and permittee takes it subject to California Water Code, Division 2, Chapter 6.5, Section 1425 et seq. Any temporary permit issued under this chapter shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation at the discretion of the State Water Resources Control Board. (0510800)

8. The State Water Resources Control Board shall supervise diversion and use of water under this temporary permit for the protection of lawful users of water and instream beneficial uses and for compliance with permit conditions. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this temporary permit. (0510600)

9. The State Water Resources Control Board shall within 30 days review and validate this temporary permit, including the findings upon which it was issued, and should the Board fail or refuse to validate this temporary permit, it shall stand revoked as of the date of said Board meeting and shall be of no further force and effect. (0530999)

10. This temporary permit shall automatically expire on April 9, 1989 without further action by the State Water Resources Control Board. (0510700)

11. Permittee shall report to the State Water Resources Control Board by April 24, 1989 the total amount of water diverted under this temporary permit. (0100700)

12. The water stored under this temporary permit shall be released for fish and wildlife preservation purposes in accordance with a plan developed jointly by the California Department of Fish and Game, U. S. Fish and Wildlife Service, U. S. Bureau of Reclamation, and the Federal Water Master for the lower Truckee River. This plan shall include, but not be limited to, the following:

A) Releases shall not exceed 200 cubic feet per second.

B) Release changes shall be increased or decreased over a 24-hour period at a rate not to exceed 5 percent per hour.

C) The California Department of Fish and Game shall be notified of releases as soon as possible but at least 48 hours in advance. (0140500)  
(0510300)

Based upon the record in this matter, I find:

- A. That this application is filed under the provisions of Chapter 6.5, commencing with Section 1425, Part 2, Division 2 of the Water Code.
- B. That the applicant plans to impound runoff under this temporary permit for subsequent releases during the summer months for the preservation of fish and wildlife in the Truckee River.
- C. That the applicant has an urgent but temporary need to divert and use water under a temporary permit.
- D. That water is available for diversion and use by the applicant and may be diverted and used without injury to any lawful user of water and without unreasonable effect on fish, wildlife or other instream beneficial uses.
- E. That the proposed diversion and use of water under this temporary permit are in the public interest.
- F. That the project has been declared exempt and a Notice of Exemption has been approved in accordance with Title 14, California Code of Regulations, Section 15307.

Accordingly, issuance of the within temporary permit is hereby authorized.

Dated: March 9, 1989

W. Ron Mangle

In accordance with the foregoing, the temporary permit is hereby issued.

Walter J. Pettit 3/9/89  
Chief, Division of Water Rights Date

**This permit is issued and permittee takes it subject to the following provisions of the Water Code:**

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated:

STATE WATER RESOURCES CONTROL BOARD

Chief, Division of Water Rights